

Filed for intro on 01/31/2002  
HOUSE BILL 2701 By  
Montgomery

SENATE BILL 2875  
By Clabough

AN ACT authorizing the levy of a privilege tax on amusements in Gatlinburg, Tennessee; providing for its collection and administration, providing penalties; and providing for the expending and distributing of the proceeds of the tax for certain purposes.

WHEREAS, certain cities within the State of Tennessee are in a unique situation in that they are visited by a large number of tourists each year and yet they have only a relatively small permanent population. This influx of tourists places a heavy burden upon the local inhabitants to provide public facilities including roads, streets, utilities, meeting places, and other public services out of proportion to the local citizens' needs and at least a portion of these expenses should be borne by the tourists who make use of the needed facilities and services; and

WHEREAS, Gatlinburg is one of such cities; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. As used in this act, unless the context requires otherwise, the following definitions shall apply:

(a) "Admission" means admission into or for an amusement after consideration paid by single ticket, season ticket or subscription; for any admission charged within any enclosure in addition to the initial charge for admission to such enclosure; and for the use of sporting or recreational facilities or equipment, including the rental of such

facilities or equipment; and shall apply on admission fees or charges, whether or not a ticket is actually issued;

(b) "Amusement" means any theater, motion picture house, cinema, athletic contest, exhibition, pageant, show, production, demonstration, play, performance, concert musicale, recital, reading, circus, carnival, act, exhibit, lecture, address, nightclub, cabaret, dance, dance hall, restaurant which provides either floor show, singing, dancing, or dancing facilities for patrons, any ride or excursion where passengers are taken on and discharged within the county boundaries, and shooting galleries, as well as all mechanical or electrical devices operated for pleasure or skill where a fee is charged for admission or entrance or for the purpose of playing them, or where there is any charge whatever for them or in connection with them either directly or indirectly, where such games or devices are located in any amusement park or amusement center, provided, however, actual play on coin-operated machines of skill or chance are exempt from the provisions of this tax;

(c) "Consideration" means the consideration charged whether or not received, for an admission for an amusement valued in money whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, property and services of any kind or nature without any deduction therefrom whatsoever. Nothing in this definition shall be construed to imply that consideration is charged when the service provided to the person is complimentary from the operator and no consideration is charged to, or received from, any person;

(d) "Consumer" means any person who pays consideration into, or for, an amusement;

(e) "Operator" means the person operating an amusement; and

(f) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust,

business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit;

(g) "Tourism" means the planning and conducting of programs of information and publicity designed to attract to the municipality tourists, visitors and other interested persons from outside the area and also encouraging and coordinating the efforts of other public and private organizations or groups of citizens to publicize the facilities and attractions of the area for the same purposes. It also means the acquisition, construction, and remodeling of facilities useful in the attraction and promoting of tourist, conventions, and recreational business.

SECTION 2. The legislative body of Gatlinburg, Tennessee is hereby authorized to levy a privilege tax upon the privilege of a consumer paying consideration for admission into, or for, an amusement up to a maximum rate of three percent (3%) of the consideration charged by the operator. Such tax may be less than three percent (3%) but may not exceed three percent (3%) within the discretion of the legislative body of Gatlinburg. Such tax so imposed is a privilege tax upon the consumer enjoying the amusement and is to be collected and distributed as hereinafter provided.

SECTION 3. Such tax shall be added by each and every operator to each ticket sold for a consideration for admission into, or for, such amusement, and shall be collected by such operator from the consumer and remitted to the Department of Finance of Gatlinburg. The tax shall not be assumed by the operator. Where the tax calculated on any individual admission ticket includes any fraction of a cent, the next highest full cent shall be charged.

SECTION 4. The tax hereby levied shall be remitted by all operators who lease, rent, or own an amusement to the Director of Finance of Gatlinburg, to be remitted to such officer not later than the twentieth (20<sup>th</sup>) day of each month next following collection from the consumer. The Director of Finance may promulgate reasonable rules and regulations for the enforcement

and collection of the tax, shall prescribe any necessary forms, and may, by regulations, set other reporting and paying dates and periods.

SECTION 5. No operator of an amusement shall advertise, or state in any manner whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will be added to the consideration, or that, if added, any part will be refunded.

SECTION 6. The tax shall not apply to activities sponsored by any religious or charitable organization or any public or private educational institution where the receipts are devoted exclusively to the use of such organization or institution. Neither shall it apply to charges for admission to any activity sponsored or operated by Gatlinburg.

SECTION 7. Taxes collected by an operator which are not remitted to the Department of Finance on or before the due dates are delinquent. An operator shall be liable for interest on such delinquent taxes from the due date at the rate of six percent (6%) per annum, and in addition for a penalty of one-half of one percent ( $\frac{1}{2}$  of 1%) for each month or a fraction thereof such taxes are delinquent. Such interest and penalty shall become a part of the tax herein required to be remitted. It is a violation of this act for the willful refusal of an operator to collect or remit the tax or willful refusal of a consumer to pay the tax imposed. Each violation is subject to the imposition of a civil penalty in an amount not in excess of fifty dollars (\$50.00). The fine levied herein shall be applicable to each individual transaction involving an amusement taxable by this act when the operator fails or refuses to pay the tax payable to the Department of Finance.

SECTION 8. It shall be the duty of every operator liable for the collection and payment to the Department of Finance of any tax levied under the authority granted by this act to keep and preserve for a period of three (3) years all records necessary to determine the amount of such tax for whose collection and payment to Gatlinburg he may have been liable, which records the Director of Finance shall have the right to inspect at all reasonable times.

SECTION 9. In administering and enforcing the provisions of this act, the Director of Finance shall have as additional powers the powers and duties with respect to collection of taxes provided in Tennessee Code Annotated, Title 67; or otherwise provided by law.

Upon any claim of illegal assessment and collection, the taxpayer shall have the remedy provided in Tennessee Code Annotated, Section 67-1-911, it being the intent of this act that the provisions of law which apply to the recovery of taxes illegally assessed and collected shall apply to the tax collected under the authority of this act; provided, the Director of Finance shall possess those powers and duties as provided in Tennessee Code Annotated, Section 67-1-707, with respect to the adjustment and settlement with taxpayer of all errors of taxes collected by him under the authority of this act and to direct the refunding of same. Notice of any tax paid under protest shall be given to the Director of Finance, and suit for recovery shall be brought against him.

SECTION 10. The proceeds from the tax levied herein shall be deposited in the general fund of Gatlinburg, and shall be expended so that one-half (1/2) shall be used to advertise and promote the city and one-half (1/2) shall be used for capital improvement projects for the city.

SECTION 11. The tax herein levied shall be in addition to all other taxes levied or authorized to be levied whether in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes now levied or authorized to be levied.

SECTION 12. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 13. This act shall have no effect unless approved by a two-thirds (2/3) vote of the municipal legislative body of Gatlinburg. Its approval or nonapproval shall be proclaimed by the presiding officer of the municipal legislative body of Gatlinburg and certified by him to the Secretary of State.

SECTION 14. For the purpose of approving or rejecting the provisions of this act, it shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective upon being approved as provided in Section 13.